

**WORKERS' COMPENSATION ADVISORY COUNCIL**

**MINUTES ~ ~ OCTOBER 16, 2001 MEETING [1:00 P.M.]  
710 JAMES ROBERTSON PARKWAY  
HEARING ROOM, FIRST FLOOR  
ANDREW JOHNSON TOWER  
NASHVILLE, TENNESSEE**

The meeting was called to order by Mr. Steve Adams, State Treasurer

Voting members in attendance:

Mr. Jack Gatlin [by proxy to Mr. Neeley]  
Mr. Dave Goetz  
Mr. James G. Neeley  
Mr. Bob Pitts  
Mr. Othal Smith, Jr.  
Mr. Steven Turner

Nonvoting members in attendance:

Ms. Kitty Boyte  
Ms. Jacqueline Dixon  
Mr. Jerry Mayo

Ex officio members in attendance:

Senator Joe Haynes [portion of meeting]  
Commissioner Anne Pope, Department of Commerce & Insurance  
Ms. Sue Ann Head, Administrator-Division of Workers' Compensation  
[designee for Commissioner Michael E. Magill]

Also present:

M. Linda Hughes, Executive Director  
Mr. Dale Sims  
Mr. Dave Wilstermann, Research Analyst

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Mr. Adams called the meeting to order.

## NEW BUSINESS

### A. ADVISORY COUNCIL CONSIDERATION OF LOSS COSTS FILING

#### 1. Discussion of Various Loss Cost Actuarial Opinions and Additional Information Provided To Advisory Council

Ms. Hughes noted since the September meeting the members had been provided the following materials: responses from the NCCI to the questions posed by members at the September 13, 2001 meeting; a letter from Mr. Greg Alff responding to Mr. Costner's comments at the September meeting; and a copy of Mr. Costner's written report concerning the loss costs filing.

Mr. Adams opened the meeting to a discussion of the NCCI's prospective advisory loss costs filing. Mr. Smith moved to adopt the NCCI's proposed increase of +0.5%; the motion was seconded by Mr. Neeley. At Mr. Adams' request Ms. Hughes explained the significance of the Advisory Council's actions regarding Commissioner Pope's alternative decisions on the filing.

Mr. Adams asked Commissioner Pope for comments concerning the filing prior to a vote on the motion. Commissioner Pope requested Everett Sinor, Assistant Commissioner of Commerce and Insurance to address the issue.

Mr. Sinor explained the department views the posture of the actuarial reviews as one of dueling actuaries who used different methodologies and he said he is not sure either methodology is wrong. He listed the following as reasons the department is concerned about such a small increase in the loss costs: (1) the market is hardening; (2) the assigned risk market percentage is increasing [not rapidly but it is approaching 10% if not already there]; (3) the assigned risk market would be competing with the voluntary market carriers; (4) the insolvency of Reliance Insurance Company [which could be an indication the insurance industry is underpricing in the market right now]; the terrorist attack and the probable reduction in the capacity of the reinsurance market [which could result in an increase in the cost of purchasing reinsurance for workers' compensation risks]. Mr. Sinor said all these factors lead him to the feeling that the Advisory Council might want to recommend a safer course than the requested small increase. He stated otherwise an underpricing this year could result in a spike next year if indeed the loss costs should have been increased by 5% to 8% as Mr. Costner suggested. He stated he thought one of the worst things that could happen to the market is instability [real highs and real lows year to year] in prices for the employers. Mr. Sinor stated the department was looking to the Advisory Council to give the commissioner a range so the department would have some flexibility to see how events emerge in the next 30 days before a decision is required. Commissioner Pope stated since there are dueling actuary opinions and given the latest events which have occurred in the insurance industry, the department is requesting some flexibility.

Mr. Mayo stated he agreed with the commissioner's statement, as the market is hardening. He said, however, it is not hardening as a result of the World Trade Center as it started hardening

before that and capacity will be an issue. He said a + 0.5% increase in workers' compensation at this time is not in the best interest of the industry, nor is it in the best interests of Tennessee. Mr. Mayo predicted if a +0.5% is approved this year, there will be a major increase next year, which will not bode well for either the industry or for people who buy workers' compensation in the State of Tennessee. He suggested the Advisory Council consider something greater than +5.0% as an increase.

Mr. Smith suggested if the department is uncomfortable with the filing and the differing actuary opinions, perhaps the filing should be rejected and the NCCI requested to make a new filing and with the additional information available the next filing might be better as everyone would have an opportunity to review the all of the data and information. He stated he did not think the Advisory Council would be wise to ignore the opinion of its consulting actuary, since to do so would be a waste of money and would not be in keeping with the role of the Advisory Council. He remarked that it is not the role of the Advisory Council to pluck a number from the air. Mr. Mayo responded he was not suggesting that action, but rather that the Advisory Council give the commissioner a range to work with.

The NCCI was requested by Mr. Goetz to explain their position to Mr. Costner's review of the filing. Mr. Tony DiDonato responded on behalf of the NCCI. He first summarized Mr. Costner's opinions as follows: (1) the NCCI bases its indication of the past two policy years and the most recent year (1999) is indicating a decrease yet if you review any of the older years, without including 1999, an increase of +7.0% or greater is indicated; (2) while the current data on the older years are indicating +7% or more, in prior years the NCCI did not indicate such a large increase because those years had to be projected to an ultimate level and in the current filing the projection for the older years is higher than indicated previously. Mr. DiDonato stated the NCCI agrees it is true every other year but 1999 is indicating an increase of +7% or more and while he believes the NCCI filing to be appropriate, he declined to say only an increase of +0.5% is appropriate. Mr. DiDonato stated he thought there is some merit to what Mr. Costner did. With regard to the second issue, he agreed the NCCI did not project as accurately as it would like - the development did go up. He pointed out the upward development is included in the analysis of the current filing and he had no reason to believe there is going to be another upward swell in these numbers. Mr. DiDonato told the Advisory Council he was very comfortable with the development factors in the filing, although it is true you can look at only the other years and it would yield a larger increase.

Mr. Goetz asked Mr. DiDonato if the NCCI had made any projections concerning the impact of the terrorist attacks of September 11. Mr. DiDonato said he thought capacity will shrink and that reinsurance rates will be going up. He explained reinsurance rates are not within the purview of the NCCI as it files for rates before any reinsurance. He indicated while some of the people in the World Trade Center may have been from Tennessee, he did not think the number of injuries and fatalities would affect Tennessee; the primary impact for Tennessee will be the impact on the reinsurance market.

Mr. Mayo asked Mr. DiDonato to explain what the NCCI position would be if the commissioner rejected the current filing and asked the NCCI to re-file. Mr. DiDonato responded that if asked to re-file, the only change he would anticipate would be an increase of +2.5% for the change in the AMA Guides, 5<sup>th</sup> Edition, which was rejected earlier in the year. Mr. DiDonato stated his range of comfort level for the current decision regarding loss costs would be from +0% to +5%.

Mr. Greg Alff then addressed the Advisory Council. He stated he agreed with Mr. DiDonato's synopsis regarding Ed Costner's comments. Mr. Alff said if the NCCI is requested to re-file, one option would be to include three years of experience instead of two, which would result in an indicated increase of +3.0% to +4.0%. He explained that the upward development for 1996 and 1997 was driven by the changes in medical trend; there is almost no change in the indemnity portion. He agreed the higher trend and development factors are now taken into account in the current filing. As for items outside this data, he agreed the market was already tightening before the terrorists' attack and now it is tightening faster now in terms of companies raising rates and prices.

Mr. Alff stated he thought it important for the Advisory Council to remember the issue for determination is the loss costs to go into the rates and companies have a degree of flexibility to adjust for their own perceived rate level need. Mr. Alff said, based solely on the data, he stood on his original analysis of an increase from +.05 to +1.4%. Mr. Alff said, given the status of marketplace, if the Advisory Council is concerned about the other issues and concerned about the negative indication for 1999, it would be reasonable to recommend an increase up to +4.0% or +5.0%. He said he would be against an increase greater than +5.0%.

## 2. Vote: Recommendation and Written Comment of Advisory Council to Commissioner of Commerce and Insurance

Following a brief break, the Advisory Council reconvened. Mr. Smith requested that Mr. Goetz be recognized for an amendment to his motion. Mr. Goetz moved that Mr. Smith's original motion be amended, based on the data the Advisory Council has been provided, to give the commissioner discretion between +0.5% and +1.4%. Mr. Smith accepted the amendment to the motion, which was seconded by Mr. Neeley. Mr. Neeley called for question on the Motion to Amend and it was adopted unanimously by the voting members of the Advisory Council. The Motion, as amended, was adopted by the voting members unanimously [6-0].

## B. DISCUSSION OF WORK PLAN FOR NOVEMBER & DECEMBER 2001

The Advisory Council was provided a list of potential issues for possible discussion prior to the end of the year and Ms. Hughes discussed this list. Members were requested to contact Ms. Hughes if they wished to serve on either the "Chiropractor Study Subcommittee" or the "Adjuster Licensing Subcommittee" (which had been requested to discuss claims handling standards and the possibility of certification of workers' compensation adjusters).

Mr. Adams discussed the anticipated length of the legislative session beginning in January 2002. In an effort to begin the discussion of workers' compensation issues prior to January, the Executive Director was requested to draft a letter to be sent to interested stakeholders and legislators inviting submission of potential legislation to the Advisory Council for discussion at the December 13, 2001 meeting.

#### OLD BUSINESS

Mr. Mayo informed the Chair there was no need for an additional meeting of the group which had been appointed to review the loss cost multiplier calculation sheet developed by the Department of Commerce and Insurance. The group had been scheduled to meet following the full Advisory Council meeting.

The chair adjourned the meeting at 2:15, without objection.